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COMMITTEE ON ECONOMIC, SOCIAL
AND CULTURAL RIGHTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLES 16 AND 17 OF THE COVENANT

Concluding observations of the Committee on Economic,
Social and Cultural Rights

PERU

1. The Committee considered the initial report of Peru (E/1990/5/Add.29) at its 15th, 16th and 17th meetings, held on 7 and 9 May 1997, and adopted the following concluding observations at its 26th meeting, held on 16 May 1997.

A. Introduction

2. The Committee expresses its appreciation to the State party for submitting its initial report and for the written replies to the list of issues, although they were not presented to the Committee in time for them to be translated and for its members to study them in greater depth.

3. The Committee also expresses its thanks to the Government of Peru for sending a high-level delegation, headed by the Minister of Justice, which replied to most of the questions asked orally and offered to forward information on those questions that were left unanswered or were not satisfactorily answered.

4. The Committee nevertheless regrets that the written and oral information submitted by the State party was essentially legalistic and heavily focused on civil and political rights, and that it excessively concerned the successes achieved by the Government's social policy, rather than providing detailed information on the actual state of economic, social and cultural rights in Peru.

5. The Committee wishes to express its gratitude to the United Nations agencies and Peruvian non-governmental organizations which provided it with documents that made a valuable contribution to the dialogue.

B. Positive aspects

6. The Committee notes the statement by the State party's delegation to the effect that the State party has begun a process of social reform involving amendments to legislation, and notes the establishment of new institutions and the implementation of programmes in various spheres.

7. The Committee notes with satisfaction that a number of discriminatory legal provisions that used to exist, particularly relating to women, have been eliminated.

8. The Committee welcomes the establishment of the Ministry for the Promotion of Women and Human Development.

9. The Committee notes with satisfaction the establishment of the National Social Compensation and Development Fund, which carries out assistance projects and projects to encourage the development of medium-sized and small enterprises.

10. The Committee notes with satisfaction the reforms introduced by the Government to improve the educational system and to make it accessible to all sectors of society. It views the literacy and school-building programmes to foster the education of children and adults in rural areas and the comprehensive assistance programme for children as positive steps towards ensuring realization of the right to education. The indigenous-language literacy and education programmes are also of particular importance, as, beyond their practical objectives, they help to preserve indigenous languages and to strengthen the cultural identity of the groups speaking the languages concerned.

C. Factors and difficulties impeding the implementation of the Covenant

11. Peru is made up of three distinct societies, living almost independently one of the others, divided along ethnic, economic, social, cultural and linguistic lines. At the bottom of the pyramid live the bulk of the population, namely the indigenous Indians of the Alto Plano or the mountains and the Amazonian Jungle. Most of them do not speak Spanish, but Quechua or Imaru; they are extremely isolated and marginalized. They are thus not in a position to exercise effectively their economic, social and cultural rights.

12. Given the situation described above, the Committee, although aware of the high cost of rebuilding the infrastructure destroyed during many years of internal violence, is of the opinion that the greatest obstacles to the fulfilment of the economic, social and cultural rights are, inter alia:

(a) The failure to address the persistent and serious problems of poverty; 60 per cent of Peruvians live beneath the poverty line and do not enjoy proper health and educational facilities;

(b) Gross inequality in the distribution of wealth among the population;

(c) The failure to implement agrarian reforms;

(d) The lack of proper health services and the drastic reduction of public expenditures in the field of health;

(e) The impoverishment of State schools over the past decade, coupled with a decline in teachers' salaries and the consequent deterioration in educational standards, accompanied by the increasing poverty of families; and

(f) The acute forms of discrimination that particularly afflict women, indigenous people and other minority groups, and the great inequalities permeating Peruvian society.

D. Principal subjects of concern

13. The Committee notes with concern that the 1993 Constitution has not incorporated the provisions of the Covenant, which consequently do not constitute a part of domestic law and therefore cannot be invoked before Peruvian courts. This situation is contrary to what had been the case under the 1979 Constitution, which incorporated the provisions of the Covenant. The Committee notes the information contained in the State party's report (paras. 126 and 127 among) that, before being definitively incorporated in the 1993 Constitution, any human rights treaty signed by Peru must first be approved by Congress by a two-thirds majority and then ratified by the President. The Peruvian delegation failed to give the Committee a straightforward answer indicating that those steps had been taken by the State party vis-à-vis the Covenant. Among the rights contained in the Covenant which were recognized and incorporated in the 1979 Constitution, but which have so far been left out of the 1993 Constitution, are:

(a) The right to a decent standard of living (art. 2 of the 1979 Constitution);

(b) The rights to food and adequate housing (art. 18),

(c) The equality of opportunities and responsibilities between men and women (art. 2);

(d) Labour rights in general.

14. The Committee further notes that, under the 1993 Constitution, international human rights instruments are on the same level as domestic laws and that a recent decision of the Supreme Court of Justice stated that the provisions of those instruments do not have constitutional status.

15. The Committee is particularly concerned at the insufficiency of the fulfilment of the rights of the indigenous and black populations to education. It notes, for example, that about 22 per cent of Quechua-speaking inhabitants of Peru, and among them 31 per cent of females over six years old, receive no

schooling at any level. This situation has lately been aggravated as a result of the decline in government expenditures relative to GDP.

16. Most of the Indian and Mestizo populations of Peru, which amount to over three quarters of the country's total population, are extremely poor, and the Committee notes with concern the precariousness of the health situation of these people. The Committee finds that poor women with no education have a maternal mortality rate 10 times higher than that of educated women.

17. The Committee notes with concern that there are various forms of discrimination against women, particularly in the areas of education and employment.

18. The Committee is concerned that many workers do not earn the minimum wage fixed by law. It is also concerned that the minimum wage is lower than the cost of the basic shopping basket, as the Peruvian delegation itself recognized. The characterization of young people aged 16 to 25 as "apprentices" and their resulting exclusion from coverage by the relevant labour legislation is also a major source of concern to the Committee.

19. The Committee is concerned about the ineffectiveness of labour legislation to protect trade union rights, including the right to strike. As a result, despite the Government of Peru's declared policy of strengthening the labour inspection services and introducing changes to the monitoring and application of labour norms, the basic rights of workers are frequently violated.

20. The Committee is concerned that the bulk of the population is excluded from any form of social security because of the existence of a sizeable informal sector in the economy.

21. The Committee is concerned at the modification of the national pension scheme by law-decree No. 25967 and by the new legislation on the private pension scheme under law-decree No. 25897, which, according to various sources of information including ILO, have prejudiced workers' rights.

22. The Committee is also concerned at the situation of pension rights' cases pending since 1992, which, according to information received by the Committee, affect some 50,000 pensioners who have not received their pensions. With respect to the civil servants affected by decree No. 817, the pending cases affect 280,000 pensioners and 50,000 active workers.

23. The Committee is concerned about the high mortality rate among children and women due to the lack or inadequacy of proper health services.

24. The Committee is concerned about the large number of child workers and street children in Peru and the inadequacy of the measures taken by the Government to combat these phenomena.

25. The Committee notes with concern the high levels of illiteracy, truancy and school drop-out.

26. The Committee is concerned about the great number of forced evictions of people in the Amazonian basin, resulting in the destruction of their habitat and way of life.

E. Suggestions and recommendations

27. In the view of the Committee, the introduction and implementation of much-needed social justice measures, i.e. political, economic and social reforms, are needed in order to break the vicious circle of violence and counter-violence, and to win over the indigenous population, the peasants and other underprivileged sectors of Peruvian society.

28. The Committee also calls upon the Government to make a greater effort to translate the Covenant into appropriate indigenous languages and to give more publicity to its provisions.

29. The Committee recommends that the State party's next periodic report contain specific information on the activities of the Defender of the People and those of the Court of Constitutional Guarantees in the field of human rights, especially with regard to the protection of economic, social and cultural rights.

30. The Committee urges the State party to take effective action to eliminate all forms of discrimination and marginalization that afflict indigenous populations in the enjoyment of their economic, social and cultural rights.

31. The Committee recommends that the Government of Peru take steps to guarantee equality between men and women in all fields.

32. The Committee recommends that the State party make the necessary efforts to ensure compliance with the legislation on minimum wage, safety and health in the workplace, equal pay for equal work for men and women and to ensure the legal recognition of young people from 16 to 25 years of age as workers. To that end, the Committee stresses that sufficient resources should be allocated to the labour inspection services to enable them to perform their task properly. It also recommends that the State party take steps to ensure that the private pension system is not promoted to the detriment of the State party's obligations towards the public pension system, in terms of safeguarding pensioners' acquired rights.

33. The Committee recommends that urgent steps be taken, in particular by raising the awareness of employers and State agents, with a view to guaranteeing fully the right to engage in trade union activities and the right to strike.

34. The Committee recommends that the State party, in cooperation with UNICEF and ILO, launch a programme to combat the exploitation of child labour and the abandonment and exploitation of street children. The Committee recommends that other steps be taken to prevent and combat the use of child labour, based on the full observance of international standards relating to the minimum age for the employment of children, as set forth in ILO Convention No. 138, which it would be appropriate for Peru to ratify.

35. The Committee calls on the State party to improve the working conditions of domestic employees and make them consistent with the obligations under the Covenant.

36. The Committee encourages the State party to take steps to improve the health-care system and extend it to all sections of the population.

37. The Committee recommends that the Government of Peru increase its investments in education. The Committee recalls in this respect the State party's obligation to ensure compulsory and free primary education to all children in Peru, with a view to reducing the illiteracy rate.

38. The Committee recommends that the State party should consider ratifying the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights.

39. The Committee recommends that the Peruvian authorities take immediate measures to put a stop to the forced eviction of people, especially in the Amazonian basin.

40. The Committee calls upon Peru to submit as soon as possible all the relevant information which it failed to provide during the consideration of the present report. The State party should, in particular, give detailed information on the legislative and other measures and practices adopted in connection with the right to adequate housing and the right to social security, particularly in relation to the functioning of the pensions system.